

## REMARKS

Claims 6-10, 14 and 28 are pending and stand rejected as final. Reconsideration is respectfully requested in view of the following remarks.

### Claim Rejections - 35 USC §102/103

Claims 6 and 10 were rejected under 35 USC §102(b) as being anticipated by U.S. Patent No. 5,077,049 to Dunn (hereinafter referred to as "Dunn"). Claims 6, 7 and 9 were rejected under 35 U.S.C. §103(a) as being unpatentable over U.S. Patent No. 3,492,154 to Einstman (hereinafter referred to as "Einstman") in view of U.S. Patent No. 5,447,724 to Helmus and U.S. Patent No. 4,769,286 to LeNoane. Finally, Claims 14 and 28 were rejected under 35 U.S.C. §103(a) as being unpatentable over Dunn in view of U.S. Patent No. 3,553,008 to Reischl. Applicant respectfully traverses these rejections.

What is quoted below is Applicant's previous argument with respect to the Dunn reference, but is exemplary of each of the previous traversals of the these three prior art rejections, Applicant respectfully submits:

Dunn discloses a technique for assisting in the restoration of periodontal tissue. The technique involves placement of an in-situ forming biodegradable polymeric barrier adjacent the surface of the tooth. The barrier is microporous, and can include a biologically active agent. The barrier is made by dissolving the biodegradable polymer in a nontoxic and water-miscible solvent, and injecting the solution into a periodontal pocket. The solvent then diffuses or permeates out of the solution into body tissue, and the polymer coagulates. The system is made porous (or perhaps more porous) by incorporating water-soluble materials such as sugar or salt particles into the polymer solution. The paragraph in Dunn at column 6, lines 3-11 is indicative of his process:

For polymers that tend to *coagulate* slowly, a solvent mixture can be used to increase the *coagulation* rate. Thus, one liquid component of the mixture is a good solvent for the polymer, and the other component is a poorer solvent or a non-solvent. The two liquids are mixed at a ratio such that the polymer is still soluble but *precipitates* with the slightest physiological environment.

Both 'precipitate' and 'coagulate', as used above by Dunn, refer to the same phenomena of phase separation, and are therefore synonymous. Thus, it is clear that Dunn does not anticipate the claimed invention, because the claimed invention is not a precipitation phenomenon. The gelling in the claimed invention is of the **entire**

**volume** of solution, and there is no visible phase separation. There is no precipitation.

Applicant repeats this exemplary argument from the previous rejection because it illustrates Applicant's central theme: that the claimed invention is patentably different from the prior art because the gelling is of the entire volume, and is not a phase separation phenomenon where a gel precipitates or coagulates out of the solution.

In each of the present Action's "Response to Arguments", the Action states that Applicant argues that the references fail to show the absence of phase separation, but that Applicant does not recite this limitation in his claims. Thus, the Action seems to agree that each of Dunn, Einstman and Reichl teach a gelation phenomenon that involves a phase separation. The Action stated that the features that Applicant relies upon in his argument (namely, that there be no phase separation during the process of the invention) are not recited in the rejected claims. Applicant respectfully traverses the position of the Action that Applicant does not recite "absence of phase separation" in his claims. Applicant respectfully submits that the concept of "absence of phase separation" is intertwined with, and inseparable from, the concept of "gelling the entire volume of solution". These limitations are two sides of the same coin. In other words, "absence of phase separation" is implicit in the instant claims. But the connection between these two concepts is more than mere attorney argument. This linkage finds support in the original specification itself, for example, at page 4, lines 39-41: *"Significantly, when a "gelling solvent" is added to a polymer/solvent solution the polymer does not precipitate out as it would with a "non-solvent". Instead, the entire volume begins to thicken as the dissolved polymer absorbs the "gelling solvent".*

In any event, suffice it to say that none of Dunn, Einstman and Reichl discloses or suggests the claimed gelling because each discloses a gelling phenomenon that gels only a **portion or fraction** of the solution volume, **not the entire solution volume** as in the claimed invention. The secondary references of LeNoane and Helmus fail to remedy this deficiency in each of Dunn, Einstman and Reichl.

Thus, Applicant respectfully submits that the claimed invention is patentable over the cited references, whether taken individually or in permissible combinations. Accordingly, Applicant respectfully requests that these rejections be withdrawn.

**The alleged “atypical” use of the term “gel”**

The Action stated that Applicant is attempting to convey a different meaning to a gelling process than the recognized meaning of this term in the art. Specifically, the Action states that Applicant points to Einstman’s use of the term “gel” as meaning a partial separation from the solvents of his composition. The Action adds that this is understood to be the recognized term in the art. Applicant respectfully disagrees. Diesel fuel, while not a polymer, is an example of a liquid chemical substance that gels without phase separation as it is cooled to progressively lower temperatures.

MPEP 2173.05(a) states that, as long as a term used in a claim is not given a meaning that is repugnant to its usual meaning, Applicant is permitted to be his own lexicographer, as long as Applicants’ meaning is clear. Applicant respectfully submits that his meaning *should* be clear because he expressly states (in several different places in the specification, as well as in the claims themselves) that *the entire volume of solution gels*.

It is now apparent to Applicants that the Action considers the verb “to gel” as indicating or at least implying a partial phase separation from the original solution. While Applicant disagrees with this definition, if this interpretation can be shown to be in fact the recognized meaning of “to gel”, then, in an excess of caution, Applicant would be willing to entertain an Examiner’s Amendment. In particular, Applicant would be willing to accept the following phrase for the verb form of the word “gel”:

to gel: “to increase in viscosity to that consistent with a gel”

Such an amendment would be consistent with Applicant’s usage of the verb form of “gel” in the instant specification. Further, this definition is not circular because the word “gel” in the proposed alternate phrase (i.e., the second occurrence of the word) is the noun form, and there is no dispute as to the meaning of the noun form of the word.

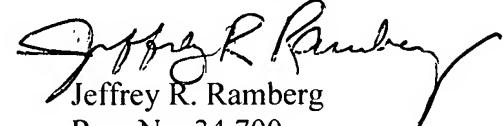
In the alternative, Applicant would be willing to entertain other phrasing suggested by the Examiner.

In view of the above remarks, Applicant respectfully submits that the present application is in condition for allowance. Accordingly, Applicant respectfully requests issuance of a Notice of Allowance directed to claims 6-10, 14, and 28.

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Should the Examiner deem that any further action on the part of Applicant would be desirable,  
the Examiner is invited to telephone Applicant's undersigned representative.

Respectfully submitted,

  
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